

Meeting Minutes-April 27, 1999

Construction Safety Advisory Committee
US Department of Energy
Berkeley, CA

Committee Chairperson: Pat Finn, Department of Energy - Headquarters (DOE-HQ) EH-51, called the meeting of the DOE Construction Safety Advisory Committee (CSAC) to order. Mr. Finn welcomed attendees and introductions were made.

Mr. Finn discussed the following events and issues that have occurred or developed since the last meeting

NOTE: A number of handouts were issued to committee members during the meeting and are referenced within the meeting minutes. Copies of these handouts will not be re-issued as part of the meeting minutes. If you are interested in a copy of a referenced handout please contact me and I will ensure you get a copy.

DOE's Worker Health and Safety Response Line interpretations completed since the May 1998 committee meeting in Las Vegas Nevada involving construction safety were handed out to committee members. Mr. Finn indicated that all construction and hoisting & rigging safety issues, except asbestos, industrial hygiene and recording keeping issues are resolved by him. A recently published DOE Environment, Safety & Health "Safety & Health Note", discusses the roles and responsibilities of the DOE's response line. The phone number and INTERNET address are provided in the Note. Mr. Finn urged the committee to use the response line service if the need arises. Mr. Finn told committee members that in most cases construction and hoisting/rigging responses rendered are researched using expertise from CSAC members or the DOE Hoisting and Rigging Technical Advisory committee members and in most cases, the person asking the question is contacted to make sure the question in need of interpretation is correctly understood and the background behind question is known. In many cases, the background behind the question is a disagreement between those providing oversight and direction and the contractor who feels the direction is overzealous or beyond the contractual requirements. Mr. Finn reminded the committee that the reason for the response line is not to intervene and/or rule on issues that are not clearly understood

A copy of the recently signed an agreement between the Occupational Safety and

Health Administration (OSHA) and the National Commission for the Certification of Crane Operators (NCCCO), was handed out to committee members. The agreement officially recognizing the national crane operator certification program. This initiative evolved from a tower crane accident in the San Francisco about twelve years ago and preliminary OSHA efforts to initiate of rulemaking involving the certification of crane operators. The hoisting & rigging industry, specifically the Specialized Carriers and Riggers Association and the International Union of Operating Engineers, established a work group, the “National Commissions for the Certification of Crane Operators” to establish a voluntary consensus process for certification of crane operators. It is specifically directed at states and municipalities that do not have legislative mandates for crane operator certification. With the signing of this agreement, OSHA will now recognize operators who have achieved certification through this program as meeting the training and qualification requirements of the OSHA standards and those referenced ASME B30 Crane standards.

NOTE: If any DOE sites that are located in states or locations that does not have a crane operator certification program and are interested in trying the NCCCO program out as a “pilot program,” contact Mr. Finn.

OSHA regulatory standards updates were handed out to committee members.

OSHA’s Advisory Committee on Construction Safety and Health meets the week of May 3, 1999 in Washington D.C. to provide guidance on proposed OSHA rulemaking activities. Their proposed standard “Safety and Health Program for Construction,” is in draft proposal only. At this time, the draft proposal reads very similar to the old DOE Construction Safety Order 5480.9a, which the subcommittee used as its straw man for developing the draft proposal. OSHA just did release a proposed standard for “Safety and Health Programs” under their 29 CFR 1910 General Industry Standard. Just two or three years ago, OSHA indicated that they were only going to have one safety and health program standard for all industries. Both industry and labor opposed this approach. As a result of this opposition, the new 29 CFR 1910 draft proposed standard for Safety and Health Programs does not include the construction industry. However, all organizations are still not happy with the proposed standard. Several construction industry trade associations are opposed to this standard because some of the construction trades, electrical and mechanical for example, frequently return to completed projects for warranty or other post completion work. They will now be required to perform this work under the jurisdiction 29 CFR 1910 General Industry standards. This work would require a safety and health program be in

place even though, at this point in time, the construction industry does not require this type of program in 29 CFR 1926 subpart C. Also, if and when a construction safety program standard is completed, there is concern that two separate program standards will apply to their operations.

DOE officially took issue with and submitted numerous comments to OSHA's proposed rule on the Steel Erection. OSHA scheduled nine days of informal public hearings to hear objections to the way the standard was written. It should be noted that the standard is written verbatim as it was submitted to OSHA by their Steel Erection Negotiated Rulemaking Advisory Committee (SENRAAC). OSHA had taken great pride in the fact that they had established a negotiated rulemaking committee that was able to come to consensus in writing this standard. OSHA thought everything was fine with the proposed standard, but has since found out that numerous other organizations not represented on the SENRAAC are not happy with the proposed standard and have so stated in the informal hearings.

OSHA's 29 CFR 1926 subpart M, "Fall Protection" standard has received objections from the residential construction industry with regard to the difficulty of applying certain provisions of this standard. OSHA has elected to reopen subpart M for comment for the purpose of resolving these issues.

OSHA is considering making several changes to 29 CFR 1926 subpart L, "Scaffolds." These include providing access to platforms where decking extends past the ends of the scaffold, changing the minimum width for roof brackets to less than 12 inches, changing the requirements for grounding of the scaffold during welding operations, and requiring the use of scaffold grade planks.

OSHA wants to go forth with a construction specific confined space standard. Several construction industry trade associations have expressed opposition to the requirements for a permit system for confined space entry. However, it appears that OSHA intends to issue a proposed rule for confined space entry that includes a permit entry requirement.

OSHA's existing PPE standard, 29 CFR 1926.95, requires that personal protective equipment (PPE) be provided and used when necessary to protect employees from hazards which can cause them injury, illness, or physical harm. OSHA is now proposing to revise its PPE standards to clarify who is required to pay for the required PPE and under what circumstances. According to the proposal, the employer would be required to provide all OSHA-required PPE at no cost to the

employees with the exception of protective footwear and prescription safety eyeglasses that can also be used off the jobsite.

Bills for OSHA reform proposed in the 106th Congress, were handed out to committee members.

- a. Republican sponsored house bill, H. R. 1192 “OSHA Reform Act of 1999,” which states all new proposed standards can only be developed if; the standard is needed to address a significant risk of material impairment to workers and will substantially reduce that risk; there is a reasonable relationship between the costs and benefits of the standard and the standard will provide protection for the employees in the most cost-effective manner to minimize employment loss. The bill establishes the right for non-organized labor safety and health committees at the work sites to be formed to discuss work site conditions. Organized labor contends that allowing safety and health committees to be formed to discuss work site conditions should not be allowed on non-organized work sites because only organized labor can establish cooperative arrangements between the employer and the workers on issues of work site safety. A significant aspect of Bill H. R. 1192 is that it fundamentally gets rid of OSHA’s compliance efforts altogether. Enforcement is basically eliminated and any compliance would be basically cooperative on the part of the employer with a great deal of emphasis placed upon programs such as OSHA's existing Voluntary Protection Program.
- b. In contrast to the above proposed bill, the Democrat's Senate proposal, S.653 “Safer Workplace Act,” strengthens employee protection from reprisals and increases penalties for noncompliance. This bill proposes to greatly increase the penalties for citations whereas H.R. 1192 greatly reduces OSHA's compliance activities and focuses on industry cooperation through voluntary programs and OSHA outreach activities.
- c. Bill H. R. 987 “Workplace Preservation Act,” would prohibit OSHA from promulgating or issuing any standard or guidelines on ergonomics until the National Academy of Science completes a peer-reviewed scientific study of the available evidence examining a cause and effect relationship between repetitive tasks in the work-place and musculoskeletal disorders or repetitive stress injuries and submits their findings to Congress.
- d. Bill S. 651 “Wrongful Death Accountability Act,” would greatly increases penalties for wrongful death in the work place.
- e. Bill S. 650 “Federal Employees Safety Enhancement Act,” which will put all federal employees, including those working for the post office, under OSHA’s jurisdiction. If passed the act would allow OSHA to inspect federal agency workplaces, cite and impose penalties on those agencies.

A recent court decision struck down an OSHA initiative that concentrated the agency's enforcement efforts on establishments having higher than average incidence rates that did not respond to OSHA notifications to implement comprehensive safety and health programs or be subject to enhanced scrutiny during inspections. The U. S. Chamber of Commerce, which challenged the program in court, argued that the voluntary program was coercive and mandated safety standards beyond what is called for in the federal law. The court ruled that OSHA should have conducted formal rulemaking before implementing the program, so that stakeholder concerns could be factored into the agency's plans. OSHA may appeal this decision.

Mr. Gerry Lipka, Manager ES&H and Mr. Bryan Drennan, Construction Safety Officer, Sandia National Laboratory gave a presentation on "Owners Involvement in Construction Safety".

Mr. Pat Finn gave a review of the 1998 ORPS/CAIRS Construction Incident and Injury/Illness data.

Mr. Lynn Holt, LMITCO gave an analysis on OSHA's Citation Data from 1991 vs. 1998, (See Attachment 6). Analysis was based on "The 100 Most Frequently Cited OSHA Construction Standards in 1991: A guide for the Abatement of the Top 25 Associated Physical Hazards," and the OSHA's Standards Cited for SIC Division C "Construction" in 1998.

Mr. Bryan Drennan gave a presentation on "Site Specific Construction Safety Plans".

Mr. Craig Schumann, DOE-Argonne Group Office gave a presentation on "Comparison of the 1999 National Electrical Code Provisions to 29 CFR 1926-Subpart K".

A round table discussion was held discussing the inclusion of construction activities into onsite verification efforts DOE's Integrated Safety Management System. Participants in the discussion were Mr. August Maniez, DOE Savannah River Operations Office; Mr. David Worrall, DOE Oak Ridge Operations Office; Mr. Allan Herrbach, DOE Albuquerque Operations Office; Ms. Eva Jean Bryson, DOE Rock Flats Field Office; and Mr. Craig Hauber, Westinghouse WEC/WIPP. Mr. Herrbach did provide handouts. The discussion revealed that construction activities were not universally reviewed at all sites, and at those sites where construction was reviewed, the approach was not consistent from site to site.

Mr. Jim Belleau, Western Area Power Association gave a presentation on his involvement with OSHA's Communication Tower Construction and Maintenance Activities Task Force. Presentation handouts were issued to committee members.

Mr. David Worrall provided an update to the committee on the ETTP Trackhoe incident at Oak Ridge National Laboratory. For details, you may contact Mr. Worrall at (423) 576-9551).

Ms. Eva Jean Bryson; Mr Richard Scott, DOE Oakland Operations Office; and Mr. Ken Zahora, National Ignition Facility (NIF) Project Team gave a presentation on the safety program at the NIF project. Presentation handouts were issued to committee members.

New Business/Open Discussion

Mr. Scott Potter, DOE Richland Operations Office provided “Site Engineering Division (SED) Surveillance Checklist” being used at the Hanford site. The checklist provide SED guidance for conducting and documenting surveillances of assigned facilities, projects, and activities. For further information you may contact Mr. Potter at (509) 376-6114.

Mr. Finn adjourned the meeting at 5:00 p.m.